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# **Commander Directed Investigation (CDI)**

**Capt S. Daniel Colton**

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# Overview

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- **CDI Guide**
- **Authority**
- **Appropriate Issues for a CDI**
- **CDI Procedure**
- **Evidence Collection and Witness Issues**
- **Post-Investigation Process**
- **Standard of Proof**
- **Post-Report Process**
- **Releasability of CDIs**

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## *Commander-Directed Investigation (CDI) Guide*

SAF/IGQ  
1500 Wilson Blvd, Ste 110  
Rosslyn VA 22209

(703) 588-1531  
DSN 425-1531  
Current: as of 7 July 2006



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- **Authority: Authority is inherent in the command**
  - Squadron CC (or civilian equivalent) level or above (on G-Series orders)
  - Authority is based upon military custom to direct an investigation within their command unless preempted by a higher authority
- **CC's should consult the SJA before initiating a CDI**
  - JA will assist in drafting Investigating Officer (IO) appointment letter with framed allegations
  - JA will provide a legal advisor to the IO

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# Appropriate Issues for CDIs

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- **YES - Command matters**
  - Abuse of authority within the command
    - Arbitrary and capricious exercise of power for personal gain or adversely affects the rights of any person
  - Systemic (or procedural) matters
- **MAYBE - Fraud, waste and abuse; UCMJ offenses; Equal Opportunity (EO) issues**
- **NO - Issues covered by an appeal or grievance process; IG “big three” (reprisal, restriction, improper MHE referral); Senior Official misconduct; Sexual assault, Domestic abuse**

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## ■ CC Initiates the CDI by appointing an IO in writing

- Contact JA for assistance drafting appointment letter and framed allegations
- IO should be equal or senior in grade and not in subject's chain of command (generally  $\geq$  senior Capt or senior NCO)

## ■ CC Provides the IO

- Appointment letter
- Framed allegations
- Copies of relevant materials
- Administrative support (workspace, computers, copying, technical assistant, etc.)
- Subject Matter Expert if necessary (e.g. EO
- Access to witnesses and documents

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■ Oversight



# ***Procedure - IO Responsibilities***

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- **Gathers all necessary facts and evidence**
- **Stays on task by investigating only the items outlined by the commander**
  - **If new issues come to light, IO has a duty to notify the CC**
  - **CC decides how additional issues will be treated**
- **Consults with legal advisor as necessary**
- **Remains professional**
  - **Objective, neutral and fair**
  - **Friendly but not familiar**
  - **Should not disclose witness identities or opinions**
  - **Should not deceive, threaten, coerce or make promises**

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# ***10 Evidence Collection***

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- **Evidence can be testimonial (under oath), physical, or circumstantial (observations based on the circumstances)**
- **Rights Advisement**
  - **Not Automatic - Usually only if the individual is suspected of having committed an offense**
    - **Usually the subject of the CDI, rarely the other witnesses**
  - **Military - Article 31 rights advisement**
  - **Civilian - Fifth Amendment if Custodial Interrogation**
  - **Special issues may arise if interviewing Labor Union members**
- **Testimonial evidence should be memorialized preferably via AF Form**

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# Witnesses

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- **Military - CC may order to testify**
- **DoD Civilians - CC may direct to testify**
- **Civilians - Cannot be ordered/directed to testify**
  - Includes contractors, NAF employees, dependents, etc.
- **Retirees - Cannot be ordered/directed to testify unless recalled to active duty**
- **Minors - Same as civilians**
  - Parental consent will likely be required
- **ANG/Reserve Personnel - Same as civilians unless placed on active duty**

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orders

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# AF Form 1168

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STATEMENT OF SUSPECT/WITNESS/COMPLAINANT				<input type="checkbox"/> SUSPECT <input type="checkbox"/> WITNESS/COMPLAINANT	
<b>PRIVACY ACT STATEMENT</b>  AUTHORITY: 10 U.S.C. 8013; 44 U.S.C. 3101; and EO 9097 PRINCIPAL PURPOSES: Used to record information and details of criminal activity which may require investigative action by commanders, supervisors, security police, AFOSI special agents, etc.; and to provide information to appropriate individuals within DoD organizations who ensure proper legal and administrative action is taken. ROUTINE USES: Information may be disclosed to local, county, state, and federal law enforcement/investigative authorities for investigation and possible criminal prosecution or civil court action. Information extracted from this form may be used in other related criminal and/or civil proceedings. DISCLOSURE IS VOLUNTARY: SSN is used to positively identify the individual making the statement.					
<b>I. STATEMENT INFORMATION</b>					
DATE (YYYYMMDD)	TIME	LOCATION AND INSTALLATION (Bldg/Room No)	UNIT TAKING STATEMENT	REPEAT (If known) <input type="checkbox"/> OFFENSE <input type="checkbox"/> COMPLAINT	
<b>II. PERSONAL IDENTIFICATION (Print or Type)</b>					
NAME (Last, First, Middle Initial)		SSN	STATUS/GRADE		
LOCAL ADDRESS (Include Zip Code)		DATE AND PLACE OF BIRTH (If required)	TELEPHONE HOME      DUTY		
PERMANENT ADDRESS OR HOME OF RECORD (Include Zip Code)		MILITARY ORGANIZATION/EMPLOYER		DEROS	
<b>SPONSOR INFORMATION</b>					
NAME (Last, First, Middle Initial)		GRADE	SSN	ORGANIZATION	DUTY PHONE
<b>III. ACKNOWLEDGEMENT OF OFFENSES AND 5TH AMENDMENT/ARTICLE 31 RIGHTS ADVISEMENT (Suspect Only)</b>					
I have been advised that I am suspected of the following offenses:					
ADVISED BY (Full Name and Rank)					
INDIVIDUAL IDENTIFIED HIMSELF/HERSELF AS A (SF, special agent, etc.)					
SUSPECT INITIALS	and advised me that I have the following rights according to the 5th Amendment of the U.S. Constitution/Article 31 of the Uniform Code of Military Justice.				
	I have the right to remain silent - that is to say nothing at all.				
	Any statement I make, oral or written, may be used as evidence against me in a trial or in other judicial, non-judicial, or administrative proceedings.				
	I have the right to consult with a lawyer.				
	I have the right to have a lawyer present during this interview.				

<b>V. OATH/SIGNATURE</b>	
"I hereby voluntarily and of my own free will make this statement without having been subjected to any coercion, unlawful influence, or unlawful inducement. I swear (or affirm) I have read this statement, initialed all pages and corrections, and it is true and correct to the best of my knowledge."	
SIGNATURE OF PERSON MAKING STATEMENT	SIGNATURE OF WITNESS/INTERVIEWER
Subscribed and sworn to before me, a person authorized by law to administer oaths, this _____ day of _____, _____ (year).	
SIGNATURE OF PERSON ADMINISTERING OATH	
<b>VI. INSTRUCTIONS FOR CONTINUATION PAGE(S)</b>	
Use plain bond paper (both sides optional). At the top right of each page, print or type "(Last name of individual making the Statement) on (Date)." At the bottom of each page, print or type: "Page ____ of ____ Pages." The individual must initial the top and bottom entries and sign his/her name at the bottom of each page.	
AF IMT 1168, 19980401, V2 (REVERSE)	
PAGE 2 OF ____ PAGES	

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# ***Post-Investigation Process***

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- **IO prepares final report**
- **CDI Guide provides suggested format to include:**
  - **Appointment letter**
  - **Authority and scope**
  - **Background and Allegation(s)**
  - **Findings, Analysis & Conclusion**
  - **Recommendations (if requested by the appointing CC)**
  - **Testimonies of witnesses**
- **Once completed IO should submit to JA for legal sufficiency review**

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# ***CDI Standard of Proof***

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- **Standard - Preponderance of the Evidence**
  - **Just more likely than not!**
  - **Not a beyond a reasonable doubt standard**
- **Factors to consider when weighing evidence**
  - **Witness demeanor**
  - **Opportunity or knowledge**
  - **Bias**
  - **Motive**
  - **Intent and ability to recall and relate events**

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# ***Post-Report Actions***

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- **Final notification of CDI results is exclusively the CC's prerogative**
- **Information obtained may be used in any administrative action against subject or other individual - Consult JA first**
- **No formal appeal - w/in discretion of the initiating CC and the next echelon of command**

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# ***Can a CDI be released***

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- **CC is release authority for CDIs**
  - **Generally limit access - “Need to know”**
  - **May not be released, reproduced or disseminated w/out express permission of the initiating CC.**
  - **Coordinate any release of information with JA**
  - **Forward any FOIA requests to the FOIA office for coordination**
  - **IF CDI involves an O-6 - provide a copy of all pertinent documents to SAF/IGQ through the base OG office**
- **PRIVACY ACT APPLIES!!!**

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# ***Inspector General Investigations***

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# ***Inspector General Authority***

## ***AFI 90-301***

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- **Complainants have a right to file an IG complaint at any level without going through their supervisory chain**
  
- **10 U.S.C. 8020: The IG shall inquire into and report upon discipline, efficiency, and economy of the AF**
  - **Fraud waste & abuse**
  - **Reprisal**
  - **Improper mental health referrals**
  - **Blatant favoritism**
  - **Abuse of authority**
  
- **Not criminal**

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■ **See Table 2 5**





# ***Authority to Direct and Conduct Investigations, AFI 90-301***

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- **Each investigation is completed in writing by a designated appointing authority**
  
- **Only appointed IG investigating officers are authorized to conduct IG investigations**
  - **Can only investigate matters within the scope of their appointment**
  
- **Who can be an IO?**
  - **A field grade officer, senior NCO, or AF civilian with a substantial breadth of experience, exceptional maturity, and demonstrated sound judgment**



# ***General Procedures***

## ***AFI 90-301***

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### **■ Complaint resolution:**

- Dismissal, Referral, Transfer to another IG, Investigate

### **■ Investigation Steps (Investigation of an 0-5 and below):**

- Single officer (“IO”) appointed in writing  
Gather documents, interview witnesses, analyze the evidence, write an investigation report
- Notify subject’s CC in writing of scope of investigation
- CC notifies subject in writing
- CC notifies witnesses
- IG notifies Complainant
- IG documents the case as an “Investigation”

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# ***What does the JAG do?***

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## **■ JAG's role**

- Analyze complaints to ID allegations of wrongdoing**
- Advise on framing allegations**
- Advise and assist IOs**
  - Sworn testimony - All witnesses must be sworn (Para 2.42.2)**
  - Rights advisements (Para 2.45 & SAF/IGQ 14 Feb 05 memo)**
  - Investigation plan**
- Para 2.59 & OpJAGAF 1998/109: Provide a legal review of IG Reports of Investigation**
  - Should be a different JAG than the JAG advisor**
  - Review for legal sufficiency**

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# ***Standard of Proof*** ***AFI 90-301, Para. 2.48***

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**Inspector General investigations:**

**“Preponderance of the  
Evidence”**

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- **Limited Privilege, not released except for --**
  - **Official use (DoD “need to know”)**
  - **Required by law, i.e.,**
    - **Discovery requests**
    - **Privacy Act applies**
    - **FOIA, unless an exemption applies:**
      - **Usually redact information about third parties, complainant, etc under FOIA exemption 6.**
      - **Redact anything “deliberative” under FOIA exemption 5**
      - **Exemption 7, law enforcement**
      - **Legal review, Exemption 5**



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# **Article 138 Complaints**

**MSgt Dean Lares**

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# ***Article 138 Complaints***

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- **Article 138, UCMJ gives every member of the Armed Forces the right to complain that he/she was “wronged” by his/her commanding officer.**
- **References: UCMJ Article 138, AFI 51-904**

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# ***Article 138 Complaints***

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- **Scope: Matters appropriate to address include discretionary acts or omissions by a commander that adversely affect the member personally are:**
  - **In violation of law or regulation**
  - **Beyond the legitimate authority of that commander**
  - **Arbitrary, capricious, or an abuse of discretion**
  - **Clearly unfair, e.g. selective application of admin standards/actions**

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# ***Article 138 Complaints***

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- **Outside scope:**
  - **Acts or omissions affecting the member which were not initiated or ratified by the commander**
  - **Disciplinary actions under the UCMJ**
  - **Actions initiated against the member where governing directive requires final action by SecAF**
  - **Complaints against GCMCA in relations to final resolution of Art 138 complaint, unless alleged GCMCA failed to forward a file copy to SecAF**
  - **Complaints seeking disciplinary action against another**
  - **Complaints based on commanders action implementing the recommendations of a board authorized by AF regulations and governed by AFI 51-602, Boards of Officers**

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# ***Article 138 Complaints***

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## **■ Procedures:**

- Within 180 days of alleged wrong, member submits written complaint (with supporting evidence) to commander alleged to have committed wrong**
- Commander promptly notify complainant in writing whether redress is granted or denied**
  - State basis for denial**
  - Commander may consider additional evidence and must attach copy to file**

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# ***Article 138 Complaints***

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## **■ Procedures continued:**

- Member may submit complaint, along with commanders response to GCMCA over commander**
- Must submit within 90 days from notice of denial**
- May submit to GCMCA or forward to superior commissioned officer (can attach additional pertinent documentary evidence and comment on availability of witnesses or evidence, not on merits of complaint)**

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# ***Article 138 Complaints***

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- **Procedures continued:**
  - **GCMCA can conduct or direct further investigation of matter (Prohibited from delegating responsibilities)**
  - **Notify complainant in writing of action taken and reasons for such action**
  - **Refer complainant to appropriate channels that exists specifically to address alleged wrong**
    - **EPRs, suspension from flying status**
    - **Referral constitutes final action**
  - **Retain two copies of file, return originals to complainant**
  - **After final action forward a complete copy to HQ USAF/JAA for review and disposition by SecAF**

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# Questions



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